

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KEVIN L. SHEHEE,

Plaintiff,

:

Case No. 3:21-cv-274

Montgomery County Common Pleas

Case No. 2021-cv-03582

District Judge Walter H. Rice

Magistrate Judge Michael R. Merz

- vs -

KINGS FURNITURE, et al.,

Defendants.

:

REPORT AND RECOMMENDATION

This civil action, brought *pro se* by Plaintiff Kevin Shehee, is before the Court on Motion of Defendant Synchrony Bank to Dismiss under Fed.R.Civ.P. 12(b)(2), 12(b)(5), and 12(b)(6) for lack of personal jurisdiction, failure of service of process, and failure to state a claim upon which relief can be granted (ECF No. 11). Plaintiff has responded to the Motion (ECF No. 13) and Synchrony Bank has filed a Reply in support (ECF No. 15).

Synchrony reports that it has not received proper service of process under Ohio R. Civ. P. 4 and 4.1; Plaintiff does not dispute that point. Instead, Plaintiff asks the Court to dismiss the federal claim under the Federal Fair Debt Collection Practices Act and remand the remaining claims to state court (ECF No. 13, PageID 99). Plaintiff had objected to removal of this case from state court on the ground the Notice of Removal was untimely filed (ECF No. 11). The Magistrate

Judge has recommended that objection be overruled (ECF No. 23). Plaintiff's time to object to that Report has not yet expired.

Once the Court has determined it has removal jurisdiction over the case, it should exercise that jurisdiction by dismissing the Complaint for lack of service of process and therefore lack of personal jurisdiction. Because the Court lacks personal jurisdiction over Synchrony Bank, it should not adjudicate on the merits claims over which it does not have jurisdiction, to wit, Plaintiff's state law claims.

Therefore the Magistrate Judge respectfully recommends that the Complaint herein be dismissed without prejudice for lack of service of process.

April 11, 2022.

s/ Michael R. Merz
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #